

Panel 8: Indigenous People's Heritage and Landscape in the Asia Pacific: Knowledge Production, Policy Change and Empowerment

November 4, 2020

Dr. Stephen Acabado: Uh, good evening everyone! Good evening from Los Angeles! Um, welcome to, uh, panel eight of our webinar series *Indigenous People's Heritage and Landscape in the Asia Pacific: Knowledge Production, Policy Change and Empowerment*. I am Stephen Acabado, Associate Professor of Anthropology at UCLA and I am the co-convenor of this, um, webinar series. Before we start and introduce the panel, we would like to acknowledge that as a land-grant institution, the Department of Anthropology Center for Southeast Asian Studies and Asia Pacific Center at UCLA acknowledges Gabrielino-Tongva peoples as the traditional caretakers of Tovaranga (the Los Angeles basin and So. Channel Islands). As a land grant institution, we pay our respects to the Honuukvetam (Ancestors), 'Ahihirom (Elders), and Eyoohiinkem (our relatives/relations) past, present and emerging. We are grateful for the support of the Wenner-Gren Foundation for Anthropological Research through the webinars and the Future of Anthropology Grant, the Henry Luce Foundation, the New England University First People's Rights Center, the National ChengChi University Center for Taiwan Philippines Indigenous Knowledge Local Knowledge and Sustainable Studies or CTPILS, the UCLA Cotsen Institute of Archaeology, and the UCLA Asia Pacific Center, the UCLA Department of Anthropology, UCLA Center for Southeast Asian Studies, University of Hawaii at Manoa Center for Southeast Asian Studies, Ifugao State University, the Partido State University and the Save the Ifugao Terraces Movement, our co-hosts of this webinar series.

I would like to ask, um, my colleague and friend, uh, Professor Da-Wei Kwan to introduce Panel 8- Indigeneity, Identity and Empowerment, thank you!

Dr. Da-Wei Kwan: Hi, Stephen, Guy, Maddie and all our good friends online! Good morning from Taiwan! Uh, it's my honor to introduce you, um, this panel. The United Nations Declaration on the Rights of Indigenous Peoples was ratified in 2007. It was a product of a long and slow process that started in 1982 with the establishment of the UN Working Group on Indigenous Populations. A draft declaration was submitted in 1994 which became the basis for several state-parties establishing statutes on the rights of indigenous populations. In the Asia-Pacific, countries that have a long history of colonialism adopted measures to provide some form of redress to the injustice received by indigenous groups. These statutes were based on the 1994 draft declaration which predate the UN Declaration on the Right of Indigenous Peoples as well as local regulation. In this panel, we discuss various issues that indigenous groups have experienced since the ratification of indigenous peoples' rights law in different countries. We provide examples from Australia, New Zealand, Philippines, and Taiwan. This panel discusses how this law has empowered indigenous groups and how the lessons from the last 20 years help strengthen their status.

So now I would like to invite Maddie to further introduce you our panelists and moderator today. Maddie?

Maddie: Thanks Professor Daya! So good evening, everyone, from California! We have four panelists here today as well as our moderator, um, so I will be introducing them before I turn the floor over to our moderator, Guy. Our first panelist is Dr. Awi Mona who will be joining us shortly.

Dr. Awi Mona is the first indigenous person in Taiwan to obtain a PhD in law. His research is primarily in the areas of indigenous law, Aboriginal title law, and cultural and education law. Over the past decade since his return from Seattle, he has continually collaborated on indigenous rights movements with the local communities in Taiwan and has provided legal and policy advice on many indigenous laws and related problems. Awi is a member of the Seediq Nation. Awi is currently Associate Professor at the National Dong Hwa University and the chairperson of Legal Center of Indigenous Peoples Legal Aid Foundation in Taiwan.

Teodoro “Teddy” B. Baguilat, Jr. is a journalist, development worker and politician. He served as mayor, provincial governor and congressman of Ifugao. He was president of the Save the Ifugao Terraces Movement (SITMo) during which a number of relevant programs and projects on indigenous knowledge management and eco-tourism were successfully implemented. He is the Interim Executive Director of ASEAN Parliamentarians for Human Rights, Vice President and Chair of Organizing and Membership Commission of the Liberal Party, and President of Global Indigenous and Local Communities and Conserved Areas (ICCA), a confederation of indigenous groups all over the world.

Kathleen Tantuico is a lawyer whose interests and expertise focus on Philippine heritage laws. She received her law degree from the University of the Philippines-Diliman. Kathleen also holds a diploma in Archaeology from the Archaeological Studies Program, University of the Philippines. She’s a trained field archaeologist who combines her knowledge of the discipline with heritage statutes domestically and internationally. This past July, she published the academic article “The 2020 Re-Excavation of Callao Cave, Northeastern Luzon, the Philippines” in the SPAFA Journal. Kathleen is currently a project assistant at Nayong Pilipino Research Institute and a member of the National Committee on Monument and Sites under the National Commission for Culture and the Arts. She is also a consultant for the Republic of the Philippines Congress, House of Representatives at the Office of Honorable Representative Peter Durano-Calderon, 7th District, Cebu City.

Our fourth panelist is Claire Charters is from Ngati Whakaue, Tuwharetoa, Nga Puhī and Tainui. Claire’s primary interest of research is in Indigenous peoples’ rights in international and constitutional law, often with a comparative focus. Claire is working on articles on the UN Declaration on the Rights of Indigenous Peoples, the relationship between tikanga Māori and the state legal system, tensions between human rights and Indigenous peoples’ rights and on the legitimacy of Indigenous peoples’ rights under international law, which will be published as a book by Cambridge University Press. Claire is also working on a number of collaborative research projects including on Indigenous peoples’ self-determination and the philosophical foundations of Indigenous law. She is a member of the International Law Association’s Committee.

Our moderator is Guy Charlton. has a broad range of legal experience. He is currently an Associate Professor in Law at the University of New England located in Armidale, New South Wales, Australia where he assisted in the establishment of the UNE First People First Peoples Rights and Law Centre. He has lectured law in New Zealand, Hong Kong and Taiwan and published law articles in 5 different jurisdictions. He was awarded his PhD thesis at the University of Auckland Faculty of Law for a thesis entitled “Constitutional Conflicts and Aboriginal Rights: Hunting, Fishing, Gathering Rights in Canada, New Zealand and the United States.” This thesis argues that the present approach courts have taken toward the determination of the source, content and scope of usufructuary rights has been affected by historical and contemporary disputes concerning the nature and understanding of sovereignty, the nature and level of governmental authority and different philosophical approaches to political organization and

individual rights. Guy has his J.D. from the University of Wisconsin and an MA in International Relations from the University of Toronto.

And so with that, I'll give the floor over to Guy to guide us through our discussion questions with our four panelists, um, and also to reminder to our attendees that you can submit any questions you would like to ask our panelists using the q&a form. Thanks, Guy!

Dr. Guy Charlton: Thanks, Maddie, uh, I appreciate that! And, uh, hello from, uh, good afternoon from Australia. Uh, I'm, uh, honored to be able to speak with our panelists today. I think we're gonna have an interesting conversation. What I'd like to talk about with our panelists is first, talk about, uh, how they view their research and their work and then we'll jump into more specific issues about indigenous rights and international indigenous rights later on in the presentation.

Um, so I guess what I would like to direct to our panelists for our first question is, um, all of, all of our panelists here are actively engaged in not only the law and, uh, and but also in political activism and I'm wondering how does that political activism, how does your research work together to, uh, influence the work that you do, we, you do and your legal scholarship? Or how does that influence your political activism? Um, maybe Kathleen, uh, could you maybe address that, you first?

Atty. Kathleen Tantuico: Yes, um. So I think that, um, in terms of being a researcher and engaging in communities has helped me to be more active in engaging our legislators. So I've been, I'm a consultant for a congressman, a house, a member of the House of Representatives for the past four years since he was elected and, um, he always asks me about our community, I mean the community which he represents. And, um, the voice of the community is very important to lawmakers because I believe that they shouldn't make laws that are one-size-fits-all. They should go first to the communities, to the people that they want to represent and ask them, sit down with them and ask them. So, uh, in the Congress, um, the congressman they, they go home because my, my congressman works, um, in the Visayas- that's an hour's flight from the Philippines. So the setup is he goes home, um, every Thursday to sit down with his constituents and then he comes back, um, on Tuesday to attend, um, sessions in in the House, right, so... And I think that's how it is, how it should be for, um, all lawmakers because there should always be time to engage with the communities and this is something that I learned as a researcher, as a field archaeologist- that there are so many things that legislators cannot see and it takes, it really takes time to know a community to the full. It takes time and commitment to listen to the communities and to really know how they think and to make policies that can benefit them as well as can benefit the whole nation.

Dr. Charlton: Thank, thank you, uh, Kathleen. Claire, uh, in your work you've done I know, I've done some, read some of your pieces on the foreshore and seabed issue. If I, uh, um, how do you approach this issue from a legal perspective in the political activism perspective?

Dr. Claire Charters: Thanks Guy, uh, kia ora koutou, um, it's great to be here and greetings from Aotearoa, New Zealand. Um, so just by, just by my background sort of in addition to foreshore and seabed, the ways that I've combined, I guess, research and academic work with advocacy is through mainly through international advocacy. So I was part of the negotiating group in the 90s and early 2000s on the declaration for example in Geneva and also brought cases to human rights treaty bodies and I support where possible Maori who are bringing claims internationally, um, to human rights bodies and also for, on domestic issues so that's, that's the kind of advocacy side I guess, or, um, working with the community side, if you like. But it really is a given. I guess my background is a lawyer- it's very much in the advocacy kind of frame. Um so how do those two kind of marry the or how do you, what can I say about that, that marriage? Um, I think as a, as an

and Guy- I think you might understand the context quite well- I think as a, as a Maori academic be it law or any other discipline you, you almost can't help but be political. It's not, I don't know really of any Maori or indigenous academic who's not in some way or other in some sort of political advocacy kind of role. So it's unavoidable, was the first thing I would say about that kind of mix between research and advocacy and, and wearing your indigeneity, I guess, on your sleeve. Uhm, to some extent so in terms of research I think um (*coughs*), excuse me, I think my research is probably very much influenced by the advocacy but I'm also trying to usually make or advocate or make a point from an advocacy perspective in my research. I'm very much using my research to make certain points, hopefully well researched, um, in the hope that that will support my peoples and people that I work with as well. So there's, it's a two-way street, um, research and advocacy. I see research the other way, um, and I guess it permeates everything, um, that I do and you'd see that in my research and you'd see that in my advocacy, I think. So with it, so just one other thing is we have we've had relatively recently established a Centre for Indigenous Peoples in the Law at University of Auckland and I think that Centre provides a vehicle for us to be far more sort of explicit about that relationship. It's a Centre that's doing both and doing both openly modeled a little bit on the University of Arizona, yes so we're on everybody's lips at the moment but University of Arizona in Tucson's, um, uh, yeah, IPLP Indigenous Peoples' Law and Program, a policy program that was set up by, amongst others, James and I. So that's, yeah, we also provide lots of expert evidence and cases and things like that too and in the domestic context so that's as an expert but you're often, as a providing expert evidence so we're writing briefs and those kind of things. It does make it hard to really be a true academic though and because you can never divorce the politics or that or your responsibility to your peoples or to whoever you're working with.

Dr. Charlton: Um, just to follow up on that, have you had a position in your academic work where you've taken sort of a contrary position to what would maybe be expected of you politically or in your political activism? I'm just sort of curious about that because...

Dr. Charters: Yeah, um...not yet, no, I don't think so and there have been some compromising places, right, but not yet, um. I suspect it might happen so I've, I was, I cheered the government's appointees and appointed Working Group to come up with a National Plan of Action to implement the Declaration in Aotearoa and New Zealand, um, so fortunately that hasn't...I, it could have, but not yet and in the other role that probably was a little bit tricky was, um, together with Gemini, I was one of the two advisers to the president of the general assembly on the participation, on the resolution that they were trying to get through in the general assembly around indigenous participation. Uhm, and because you're an advisor to the PGA and you had to negotiate in that role all sorts of political positions, there was definitely a risk that you might have to take a sort of position in that role that was contrary to what you might think in other places or research or what your research might say and so on because you're in, you're really in that kind of negotiating space. But not, not yet. That was the closest I've probably come though, um.

Dr. Charlton: Welcome Awi, uh, and I thought I would direct the next question to Teddy. Teddy, I appreciate you making it to this webinar. Looks like you've had some quite a few difficulties, um, I you know looking at what you've done, you've been politically active across a range of offices, uh, politically elective offices, political offices as well as a journalist and I'm wondering how do you bring your indigeneity or those issues into what you're doing?

Teddy Baguilat, Jr.: Okay, well first of all I'd like to apologize, uh, if you can't see me onscreen because there's a tube running through my nostril to my, uh, larynx so that would be a bit distracting. Uh, anyway, um, yeah, I think my being indigenous is very much intrinsic in my work as a politician during my first term as a congressman. I was immediately, I was immediately assigned to Chair the Committee on Indigenous Peoples so I took it upon myself, I took the

cudgels of defending indigenous people's rights in the parliament because it's rare that we have strong political representation from indigenous peoples in the Philippines even if around 10% of the population are supposedly indigenous, uh, and it also translates now to my work as, I'm still very much a politician. I finished my nine years as congressman pushing for indigenous people's rights in Congress, doing a lot of investigations on abuses of government, the government of government agencies against indigenous peoples, violations on the implementation of the Indigenous Peoples Rights Act in the Philippines which I think is one of the, uh, well I would say one of the, um, strongest assets of indigenous peoples. We have the law which is people's rights act but in terms of implementation, as usual, there's always a lot to be said about implementing laws in the country so that's what we did in Congress. We exercised our oversight functions to talk about these violations and now, as, um, working with Asian Parliamentarians for Human Rights, we do deal with parliamentarians all over Southeast Asia even if indigenous people's rights are not considered among us, are not considered as among our priority thematic areas but we do have the area of business and human rights and it's there that we, I feel it's also important to educate our parliamentarians in Southeast Asia about indigenous people's rights because most often than not it's the big business that has violated, uh, many of the rights of indigenous peoples by displacing them from the ancestral lands, by not following the free prior, informed consent process or not respecting the right to self-determination of indigenous peoples. And finally, I guess my work with the Global Indigenous Community Conserved Areas also, you know, um, uh, requires me to do a lot of political negotiation not just with states but even with international bodies for instance where the global ICC consortium is doing its best to have the Convention of Biodiversity to recognize, uh, ancestral traditional governance in terms of conserving our biodiversity because we feel that in order for us to really be able to protect biodiversity in our planet it's important that government as well as big conservation movements and international bodies recognize that local communities and indigenous peoples are very crucial in terms of protecting our biodiversity. So yeah, my work as a politician and as an indigenous people as an advocate for indigenous peoples rights are really very much interrelated and interconnected.

Dr. Charlton: Just to follow up on that, I had a, uh, a colleague that in the States who was in that role and he found that the representation of the indigenous perspective can sometimes clash with his role as a legislator in other situations. Did you find that or did you see these as a unified whole?

Teddy: Yeah, well, sometimes because even when we have the Indigenous People's Rights Act which is a Republic Act in the Philippines, uh, my persona as an indigenous person also requires me to bring into the parliamentary discussions indigenous people's values which is sometimes very difficult for non-indigenous persons to understand. And that's why, uh, even with the laws that we have in the Philippines, there are also conflicts between existing laws against the Indigenous People's Rights Act, uh, and to me I think that is, that was my primary challenge- how to harmonize, uh, laws of the government with that of the traditional governance of indigenous peoples because I think I was in the best of both worlds. I was a former local government official, I was working with government, I knew the law at least because I implemented but at the same time, I was an indigenous person who have our own traditional governance and our own traditional values so it's really a case of trying to harmonize the conflicts that exist between mainstream conventional law and that of indigenous peoples.

Dr. Charlton: Thanks, Awi, before you got on we were talking about how we, how we bridge the gap between engagement as a lawyer, as an indigenous person and in, uh, and as an activist. How do you, how do you see yourself within that role? And I know you've been engaged in governmental entities as well. So how do you position yourself in that, that space? Hey, you're, you're muted, Awi.

Dr. Awi Mona: Yep, thank you Guy and hello to everyone and I was late because some technical problems with my computer but it's fine not right now. And for the questions, uh, how do I position myself, I think it's kind of, uh, not only for myself, I think for the general, uh, peoples in the academia because the indigenous rights movement in Taiwan has gone a huge transition from, for the past three decades. So I think for myself, I would say, uh, the, it is kind of, uh, difficult from the beginning, uh, because the, uh, from what I want to advance, sometimes will be away from what the people think in the communities and that I think, that is kind of a, for myself only, also is a learning process. It is a learning process to make the common... I think the most difficult part for me is to find a common ground to bring the community and the on the other side of the government present into the common ground and we can advance to, to achieve and what we are looking at. I think that will be some something I have been working on for the past couple of years. I think that because the, in a simple way is that we need to find common ground for community and the government side. I think that that would be first I would like to say.

Dr. Charlton: To, um, in finding this common ground, have you encountered a situation where you've had that compromise or the communities felt that the compromise is too difficult to make?

Dr. Mona: Uh I think it is, there's always some uh obstacles before us. Uh, maybe we can take one example. Uh, because in Taiwan, uh we have been, uh, making claims on our traditional territorial claims in every aspect. Uh, but the government finally proposed to a regulation saying that, uh, we are going to demarcate or to specifically, uh, proposed indigenous traditional lands for, specific, uh, tribal peoples. But suddenly, the government- they stepped one, one step back saying that we have to exclude the private land into the traditional land area. But we, it is a very difficult decision for both government and for both community peoples but what makes this worse is that we need to, uh, persuade even the more, the general public to understand what is the issue really about in terms of indigenous traditional claims. So I think in addition to, uh, the two sides from the indigenous community and, uh, and the government side, we have a bigger crowd. I mean the general populations we have to keep, have dialogue with. I think that that's another thing, uh, may apply to almost every indigenous claim in Taiwan not only for traditional land claims, even for the general social weal issues, social welfare issues even for the indigenous education.

Dr. Charlton: Um, thank you. What I thought we'd do is, uh, we could talk, maybe open up the discussion a little bit and you don't, you don't need for me to ask questions. Um, I want to take a step back and when we talk about- and I teach an indigenous rights class and one of the first things that people come in, students come in and they'll say well, "What are indigenous rights?" Can you, can you lay them out in some sort of way that is understandable to say a law student in this case? And so I'd like to put it to the panelists when you conceive of indigenous rights and how those rights are understood both nationally and internationally, how do you see those rights? Uh what's the content of them? Is it a process ? Uh, I'm interested to hear what the views of you are on that. Maybe Kathleen, you could start with that from your perspective?

Atty. Tantuico: Okay, so for me, um, a new lawyer who, um, specializes, wants to specialize in heritage law, I consider indigenous rights as an additional set of rights that indigenous peoples inherently possess by their characteristics, their consideration as an indigenous person. So in the 1987 Constitution of the Philippines, one of the state policies is to recognize these indigenous people's rights as a separate set of rights that indigenous peoples possess. So they have civil and political rights with which any, all the citizens of the Philippines who are under this Constitution possess and these additional rights that they themselves can determine and the state obligates itself through the 1987 Constitution to recognize these rights, to promote these rights, to ensure that the indigenous peoples are able to exercise them. So, um, in summary it's an additional set

of rights aside from the civil and political rights that are guaranteed to every citizen in the Philippines.

Dr. Charlton: Um, does any, Claire were your views on that issue?

Dr. Charters: Um, I second and very much support Kathleen's understanding of indigenous people's rights meaning something inherent, um, and certainly not something that is determined, um, by the state or by any actually, by any sort of external entity or group or whatever. Um, so I very much, um, agree with that. I would just add to that that, um, or probably by way of context that there is contestation about even the word rights actually. Um, and this rejection of the sort of liberal and western understanding of what might be rights, um, and that's particularly true, I think when you think about indigenous people's claims to authority because generally unless in the western tradition, rights are understood, um, it's something you have as against the state where so therefore it implicitly, um, I guess, endorses the state, the fact of the state by having rights if you think about them in that very sort of western liberal understanding. So I think, um, from an indigenous perspective, there is a contestation of that but when saying we have authority that's completely separate from the state and doesn't, we don't even know whether we recognize the state or not and that's different from indigenous to indigenous people. So there's that, there's that sort of element and certainly, um, going back again to Kathleen's point about these being inherent in indigenous determined that, um, I think there's an understanding that tikanga Maori or our legal system is what determines the content of rights and responsibilities. But you know, with that always, that idea of rights being a contested, being a contested concept I guess, um, in terms of so, yeah, so then the content so what is it in the content that will differ from indigenous peoples to indigenous peoples but certainly from a Maori perspective, um, it includes concepts of Tino Rangatiratanga or, I guess, sovereignty or self-determination or authority or authority of the, of the chief or the tribe, those kind of ideas as well. So very different from maybe that, what Kathleen was referring to, is the civil and political rights, um, so very different in character.

Dr. Charlton: So I guess the following...Go ahead sorry...

Dr. Charters: No, just to say philosophically fundamentally different...

Dr. Charlton: So, yes, Kathleen you're not limiting those rights in the sense that you were talking about constitutional rights, you're looking at it broader than that?

Atty. Tantuico: Yes of course like for example, um, we all we have the Universal Declaration for Civil or, of Human Rights and we also have the United Nations, um, Declaration for Indigenous Peoples' Rights so it's really a different set and it's a broader set and if civil and political rights are state-determined, indigenous people's rights are self-determined. And the state, it is the state's responsibility to recognize those and to not limit, to limit, not to limit those rights because, um, with self-determination really comes their right to determine themselves in accordance to their beliefs their practices their views.

Dr. Charlton: Awi, do you have any views on that ?

Dr. Mona: Yes, uh, I think in Taiwan, I would say instead of seeing indigenous rights as a grant from the state, I would say I agree with Claire and Katherine's view that indigenous rights are inherent from who we are and what we define ourselves. But unfortunately, in Taiwan, the general public see, I think they usually, uh, see indigenous peoples as a racially disadvantaged group instead of we are independent, uh, sovereign political entity. So it is interesting to know that we have, I think, everyone might be aware we have an Indigenous Peoples' Basic Law and the words we use in that law, there's one article- 20- saying that the government shall recognize indigenous

people's right so instead of saying, uh, it is a grant from the government, the law is specifically saying that the government should recognize but this term recognition, it is unfamiliar to the people other than indigenous in Taiwan. So, uh, we are building a parallel, uh, legal protection, uh, specific, specifically attached to, uh, the essentially, I mean, the essential entity as indigenous peoples. So, uh, just like Catherine just mentioned, as a citizen of Republic of China, Taiwan, we can claim we have civil and political rights under the national framework but aside from that, we can also claim as an indigenous nation and what can define a nation should be attached to this entity then we can claim that right. So, for example, everybody has a right to claim their primary education before, on the basis of equality but other than that, indigenous students can make a claim to demand that the state should provide ethnic education for indigenous persons. So I think the, in the common goal of ours, the education, uh, indigenous people can make their claim on both, uh, on both areas. So, if the people, but for myself or I most, uh, encounter the questions from my students, from my non-indigenous student, they always want to discuss why indigenous people have indigenous right and why in, what is indigenous people's right? So I think we have a lot of this discussion in the classroom but, uh, for me, I would definitely to say what i have just shared with you here.

Dr. Charlton: Claire, maybe you could just- and I'll go to Teddy after- that maybe you could just give the New Zealand perspective on that for some of the, on Awi's point of view, what's the claim, how is the claim framed in New Zealand, uh, from what Awi's point about the discussion of why is there additional, uh, for lack of a better term, right, claims of right in the New Zealand context because it's, uh, different than in Taiwan?

Dr. Charters: Absolutely and this, this is a difference that's played out on the international plane, I think as well. Um, so I think, um, the big difference is that we, in trying to explain this and, um, the big difference is that, um, we see, um, ourselves as sort of sovereign peoples, I guess, for using, uh, using western colonial language, um, and see that we continue to have rights as sort of sovereign peoples. Um, so we don't particularly, I think, conceive of our rights as being sort of civil political rights plus some other rights as indigenous peoples. Excuse me I want to, this itchy cough. Um, but instead as rights as collectives to us to authority and I think that's the fundamental difference. In saying that, um, there's often an overlap and looks, can look quite similar to the kind of rights that, that indigenous are claiming elsewhere when it comes to things like lands, territories and resources although we claim them as, um, well not only first peoples but particularly with having that kind of sovereign authority. So we don't particularly or have to particularly recognize the authority of the state at all. In fact, um, or if we do it's to share power rather than someone, an authority from which we have rights that's I think at its base, that's the starting point. That's not to say that there's clarity always on that. In fact, I would say there's a lot of murkiness and muddiness and how that plays out in politics because the fact is that the New Zealand state is the politically powerful entity, right. So there's a lot of contradictions and conflicts between them but, you know, painting it is probably as clearly as I can in terms of the fundamental position that's where it is the practice on a day-to-day basis and claiming rights of water and seabed and, um, education rights, language rights and so on plays it out, plays out a little bit differently.

Dr. Charlton: Um, Teddy, uh maybe if you could talk about your view of indigenous rights and maybe that notion that Claire talked about how to view those rights. I, I'm interested in the Philippine context. Is that something that is there, is it used? And I guess that would, ask that question to Kathleen as well.

Teddy: Yeah, um, and this is perhaps sometimes where I experience conflict in my role as a legislator and as an indigenous person because I always consider indigenous people's rights as an affirmation of who we are as indigenous peoples, what we are, and what we stand for. It is not

something that is granted to us by the state or even if, it's, uh, incorporated within the Philippine Constitution but to me, it is already intrinsic in us, in us from the very beginning. That's why, um, for instance, uh, as the government in the Philippines recognizes ancestral domain and awards titles to this, ancestral domain for me, it is not an awarding of a title but it's just merely an affirmation of what we already have which is our ancestral domain from the very beginning since time immemorial. Um, it could also mean an affirmation of our spirituality as indigenous peoples or our traditional knowledge or traditional governance practices but I also would like to include the principle of responsibility and this is something that we have always tried to advocate even among us, indigenous peoples when we, uh, advocate for our indigenous people's rights. We always include responsibility, uh, so whether it's fighting for our right to traditional governance of biodiversity, we say it's our right and responsibility because culturally, this, that is how indigenous peoples look at these rights. It's part of our responsibility to take care of the environment for instance or, um, yeah, the ecosystems within our ancestral lands. So it's important for us to inculcate in our political activism that this is not just about rights but also about strengthening the responsibility of indigenous peoples to whether it's the environment, whether it's, uh, community, uh, governance, uh, as well as other cultural practices that we have.

Dr. Charlton: Um, Kathleen, do you in terms of your perspective?

Atty. Tantuico: Yeah, so I do agree with Congressman Baguilat that it is a responsibility, it is our responsibility, everyone's responsibility to know, um, the, um, their rights and how the indigenous peoples view themselves. However, I must point out that within current legislation, there are a lot of conflicts or, um, areas, um, that directly conflict with the, these practices and indigenous people's rights. If I may give on a specific example, in the Philippines, we have the Cultural Heritage law of 2009, this is Republic Act 1066 and under this law, um, all ethnographic and archaeological materials are presumed as important cultural properties and as such, they are under the custodian, custodianship of the National Museum. So that means like, for example, as an archaeologist, if we, um, access archaeological materials or other materials that are, that are associated with indigenous peoples, it is automatically under the custodianship of the National Museum meaning we have to turn them over to the National Museum, the National Museum. It is under the possession of the National Museum but then under the United Nations Declaration for Indigenous Peoples, all indigenous peoples must have access to their rights and they also recognize themselves as the custodians of their cultural property. So I think this is a concrete example of one of the conflicts, um, where there are contesting, contested provisions of the law.

Dr. Charlton: Well, that, that leads to actually a larger question that I'd like to address to everyone. Is this, you know, the international framework for indigenous rights in the conflicts or non-conflicts or the use of that law, uh, and, uh, and that framework for national change in national law, uh, where are they? You, you pointed out one of the conflicts Kathleen, uh, with heritage laws and possession- who controls indigenous heritage. Maybe we could talk in each, uh, talk about that in the situation of Taiwan, Awi, the sort of international instruments, then we could go and talk about it in in New Zealand and come back to the Philippines with Teddy.

Dr. Mona: Okay, uh, so I think if in terms of the heritage legislation, uh, it is interesting to see that in Taiwan we are, we kind of take an approach to build up, uh, indigenous, uh, ways of, uh, our rights of claim and heritage law. Uh, because the Heritage Law in Taiwan was first, uh, enacted back to, uh, 1982 so for, so for more than three decades, this legislation leaves only very, very little space for indigenous cultural heritage. But what changes that, would say international indigenous movement both in legislation and both in rights claim has advanced what we have been working on in Taiwan for the past three decades. So, up until, uh, 2016, uh, roughly, uh, I think it will be four, three or four years ago we revised the Cultural Heritage Law in Taiwan and

we include a very specific article saying that we need to safeguard in an independent way for the indigenous cultural heritage and based on that we had one governing regulations on indigenous cultural heritage. And since then, a lot of things going on in the communities but, uh, we, I still, I still see there is a gap between the legislation and the community members because how does this legal framework does not fully match what the people think, uh, inside the community. I think that is the situation, uh, from the, uh, how does the international legal framework has advanced domestically in Taiwan but even we have the legislation in place but we still have a gap, we need to make it up from the community point of view. I think that that's the first I would like to share.

Dr. Charlton: Um, Claire, do you want to have any views on that?

Dr. Charters: Thank you. Um, lots of views on this on this topic actually on that relationship between the international, the state law, and the community law. Um, so the first one I would say is that I think that New Zealand state law is pretty much uniformly in conflict with the declaration on the rights of indigenous peoples. I think there might be some synergies, if any, around maybe language, I don't know, possibly. But certainly, New Zealand law does not live up to the declaration standards on lands territories and resources, not on cultural heritage. It doesn't live up to the declaration with respect to self-determination, um, or autonomy. Um, so sort of across the board there's this- with some maybe minor exceptions- I think that there's, there's lack of conformity between New Zealand law and, um, international norms. But I think that the declaration is still influential in moving New Zealand law or slowly, um, closer to, um, what the community might want it to be, what Maori might want it to be, um, definitely a work in progress but one, I mean I've written about the foreshore and seabed and subsequently I wrote about the influence of international norms on changes to legislation around Maori interests in the foreshore and seabed. By no stretch of the imagination is New Zealand law good compared to the declaration but it did get a little bit better as a result, I think, of advocacy around international norms and a little bit closer to what indigenous peoples were anticipating or wanting. Um, we have now as I mentioned before, a movement to try and develop a national plan of action to realize the declaration. Um, what the government thinks that that should look like and what Maori think that should look like is different. Um, that's just coming to the fore now that process is underway and I think will be interesting with a new government in New Zealand to see how that that plays out, um, but the international norms are supporting Maori and bringing um or in realizing their claims so it's supportive there. But I don't think that, um, by any stretch of the imagination do international legal norms sort of even, even if they were implemented or even if they were realized, I don't think they would necessarily, um, realize all in all of indigenous people's claims or, um, rights as a matter of indigenous law. Um, I think there are conflicts often between indigenous law and international norms and the example I used before which I think is probably relevant here too is that international law around rights definitely sees or sees the state as an actor whereas indigenous Maori claims, at least at a really fundamental level, reject the authority of the state at a basic level. I mean, they work with the state because it's the authority, it's got power but, um, at a fundamental level, the claim is about, to some extent, rejecting any authority of the state. So yeah, there's tensions all around it but, um, you know and I think international norms have an, as a whole, been useful for Maori and trying to get closer to what they think, um, where we should get to but they're by no means the only answer. But they're, they're quite instrumentally useful tool.

Dr. Charlton: I know, I'm going to ask a lawyer question, I apologize. So the, you know, the last year a couple years ago in Canada they thought of implementing, just enacting the declaration in Canadian law. Do you think that's a useful thing to do?

Dr. Charters: Well, they've done it in B.C. right. Um, yeah in British Columbia, um, do I think that's a useful thing to do? I'm hesitant to comment on Canada.

Dr. Charlton: Right, because, I mean, just sort of in general and...

Dr. Charters: Yeah, just my instinct is yes because I think you get so much closer to where you want to get to, um, if you can have the enforceability. I don't think you have to have, um, implementing the declaration as law in domestic law. I don't think that's always necessary but would it help shift and impose obligations on the state? Yeah, absolutely yeah. So there's that that's my instinct. I haven't, I mean yeah, I haven't thought about it in, yeah, detail but yeah.

Dr. Charlton: I mean, that would, yeah, the sort of issue of norms and law and these sorts of things. Um, Teddy, uh I guess I wanted to ask you in, you know, Kathleen referred to the '87 Constitution so this was before a lot of these international indigenous documents internationally arose. I mean it was there, the movement was out there, and there was a lot there. To what extent in your experience has this international dialogue that's going on as well as a national dialogue as both you and Kathleen have pointed out influenced how the rights have developed in the Philippines or influence Philippine policy?

Teddy: Okay, um, well the Indigenous People's Rights Act was passed in 1997. Uh, that's why sometimes government and the National Commission on the Indigenous Peoples, they would usually boast that we had a law that was passed much earlier than the UN DRIP, the United Nations Declaration for the Rights of Indigenous Peoples. But the problem really has been the implementation of the Indigenous People's Rights Act and this is where I think it's important that we have to continually do dialogues at both international and national current laws, is it actually being practiced in our local communities? For instance, the right to self-determination which is a very important component of the UN DRIP. It is operationalized in our national law through the free prior informed consent. The FPIC is a process which many indigenous peoples demand before any development project comes into the community whether it's mining or extractive industries or even research. Unfortunately, the problem is it's also under the law, it's a bureaucratic measure. So for instance, the law would state, "Oh, the community has two months to decide whether they agree, uh, whether they will give their consent or not." But usually, uh, in many indigenous peoples, two months is not enough for us to list, to reach a consensus. Then again there's a question of consensus. How do you decide the FPIC as, uh, sometimes it's implemented, uh, it divides the community instead of trying to build the consensus because there are those who are definitely for the project and there are those who are against the project and what the agency does is they call for a division of the community and then whoever, I mean, the majority wins that that is the decision. So whether they agree to the project or not, uh, that is what the agency, uh follows. However, for indigenous peoples, consensus means everybody more or less agrees or respects the decision of the community. So even if you have issues against, for instance, a development project comes coming in to your ancestor domain, however if it's the consensus of the community that they allow the project, then you would have to respect the decision. Uh, so the problem really is how to harmonize, uh, how to ensure that traditional governance in local communities are really being respected by national as well as international laws. Um, for instance also, I'd just like to emphasize the, what we do with the global ICCA consortium we're into, um, we're trying to have the convention of biodiversity recognize traditional governance. Now the CBD during the last Conference of Parties says that 30% of the world's planet has to be under some for some form of protection. So, like, for in the Philippines, we integrate the protected area system on NIPA Law which says that states must create, uh, national parks to fulfill its commitments to the convention of biodiversity. However, in many of these national parks, you have indigenous peoples staying or ancestral domains overlapping these

national parks and actually doing traditional governance, doing, uh, biodiversity conservation using the traditional governance. So again, there's a, there's a conflict and part of my work when I was in Congress was try how to harmonize these conflicts, how to incorporate within existing laws indigenous peoples rights and responsibilities. So at least now, we have a new, intricate integrated protected area system which recognizes that in areas where it overlaps with the ancestral domain, then it is the council of elders or the indigenous peoples traditional governments that have to be respected in terms of the conservation of biodiversity even if these are state declared national parks.

Dr. Charlton: Kathleen, you have any views then on...

Atty. Tantuico: Yes, um, I do agree, um, with what Congressman Baguilat said and if I may add, I really think that it's up to political will to, um, enrich Philippine legislation on the matter and like you said the 1987 constitution came way before a lot of international instruments like the UN DRIP and they think that um the the creation of these um these uh international instruments after the 1987 constitution gave our legislators a lot of opportunity to create more laws that implement them locally in our setting. but uh correct me if i'm wrong congressman baguilat i i think that the apra the indigenous peoples rights act which came out in 1997 is still the only um governing law that supports indigenous people's rights. so um that's one of the problems with international instruments. they will only be implementable in in a country if the local legislators if our congress creates more laws or translates them into national law. and i guess that's one of the that's one of the things that are lacking right now. in fact um congressman baguilet mentioned fbic free free prior informed consent which i believe is easy to circumvent because as i've read in various news articles there are many cases when signatures are fake or like there are a lot of quote unquote fake um indigenous peoples who who sign um free prior and informed consent especially with mining issues. so it's really difficult if um the setup is made in such a way that can produce more conflict and it really depends on political will in my opinion to improve the matter.

Dr. Charlton: well i mean there's an emerging there's, it's all emerging and particularly in in the in awi's situation in taiwan where there's less there's the basic law and then there's ongoing negotiations right now. uh i guess more generally what what what need what what do the states and the communities need to do to effectuate these rates? what affirmative actions need to be done? there needs to be will, uh a will on both on the part of political will on the part of the state but from your point of view what needs to be done on the ground or by either the communities or the state or both as a process of addressing or getting to uh an effectuation of of this self-determination? so i guess oh you're going you're part of that process right now in taiwan uh and what do you how do you view that?

Dr. Mona: Uh, I think a lot of people still think in Taiwan that we can use the idea of affirmative action to redress what indigenous peoples in Taiwan have experienced historically but, uh, there is a limit, uh, for us in using the affirmative action. Uh, so I wouldn't say that would be a perfect, uh, tool but that might be a starting point to bring, uh, peoples on the table to start the dialogue and we have already done this for the first turn of the existing uh, Tsai Ing-wen, uh, President Tsai Ing-wen on the issue of the Asia Cement in Hualien area. Uh, but the reason I say law is the limit is because, uh, even we have all the people come to the table but they, unless you recognize indigenous people have the, uh, rightful claim for traditional land. Otherwise we are in a stuck position right now because the people won't accept, uh, whenever we make a claim on historical claims. But i think that's the limit for the affirmative actions. So it is very important in Taiwan right now, I think we have to find more leverage, more leverage to negotiate or to persuade, uh, to invite more general population to stand on indigenous people's side and not to push non-indigenous peoples away. I think that that's the situation, uh, if we want if we want to, uh, have a

more advanced, advancements on indigenous historical claims. I think because in Taiwan the, a lot of general population still lack the knowledge or even we have disclosed, uh, a lot of historical evidences, we still need to make people to accept this is what really happened and we need to fix this and we need to use other, uh, other legal tool instead of using the national legal frameworks because whenever we come to the table and we need to, uh, solve the issue at hand using the national legal frameworks, there's always a limit and there's always the, uh, how to say, they always have a bottom line to compromise. So I think that that's the, some ideas and some sorts, uh, from my perspective, yeah.

Dr. Charlton: Um Claire, from your point of view New Zealand, I think has, this perspective that it's more willing to compromise than say the Philippines or Taiwan or other states is that, is that your experience?

Dr. Charters: Yes, I think so, um, and I think it's partly driven by numbers that we're what, 16% of the population, um, and so we're powerful politically. I mean it's not, it's far from a majority but we're powerful in that way. Um, I think there's also been a historical, um, tradition of that, there's been at least some accepted, acceptance, I think, in some echelons of state power that it's a political relationship between peoples. Um, Waitangi, the Treaty of Waitangi I think is really essential to that, that our sort of founding document that's contested but you know the narrative goes that our founding document is a coming together of two peoples who meet equally in this sort of pluralistic society. So I think that, um, that history, that narrative, um, is really important, I think. Um, also, I mean I struggle with and I'm not sure how to understand this myself it is but there are such, I mean such large percentage of the population that are mixed as well- looks Maori, Pakia and I think that changes the dynamic. We're quite a highly, um, integrated society so in in that sense so compared to say the U.S. where you have reservations or even in Australia where you've got your, where you don't see aboriginal peoples in society and, sorry, not in urban centers, sorry, we do but very rarely in New Zealand. We Maori and non-Maori mix daily, all the time, our lives are intertwined in some ways so I think that changes the political dynamics. I support everything that Awi just said although he was talking about particularly the context in Taiwan but that affirmative action is not really going to get you that far. It might, it might get you some nice, um, rights and education or in particular areas but it won't work that well in terms of historical claims and there was that case Pitanjajara, I think. It was a case, Guy, from Australia you might remember, that one, um, I can't remember the, Gerhardy and Brown?

Dr. Charlton: Yeah, the Pitanjajara where the High Court said "Well it's okay. It's a special measure under the Racial Discrimination Act."

Dr. Charters: For access, right?

Dr. Charlton: Right.

Dr. Charters: Whether they could deny someone who what that's but not about the land right.

Dr. Charlton: Not about the land right.

Dr. Charters: It's not going to get you your land back. It might give you some advantage in terms of who can go on to that land or whatever. The other, the other thing and this is, that with affirmative action too is it's time limited, arguably. I mean the idea is that you, you do affirmative action until that whoever you're trying to get up to the state of whatever the ideal is or whatever the norm is and once you get them there then you're done. It's not, it's not a good conceptual framework to address what indigenous peoples are claiming as indigenous peoples except with

some, you know, yeah, I, and, so I agree the political leverage. The other point I should add about New Zealand is we've got, uh, we've got seats, um, in our parliament. So we've got seven seats in parliament dedicated to Maori and they are, they are crucial to political leverage. They can make or break our government.

Dr. Charlton: They can, they do have, they do have seats and indigenous seats in Taiwan are they crucial to the government, Awi?

Dr. Mona: Can you repeat that, Guy?

Dr. Charlton: Yeah, um, they also have seats like New Zealand in Taiwan and, uh, indigenous seats are they crucial to the government in the same way that, uh, as Claire pointed out in New Zealand, they, it's a long-standing, uh, existence of Maori seats who have become important in terms of governing. Uh, how are the seats in Taiwan and do they in fact have that a role similar role in Taiwan for governance?

Dr. Mona: Are you saying the political seats?

Dr. Charlton: Yeah, the political seats.

Dr. Mona: Okay, uh, I think, uh, because of the, uh, we only have a, roughly six to seven seats in the central legislation legislature. So it is, it doesn't really make a big, huge differences but the only thing that matters that, it is when the two political parties are very close. I mean because we have two major political parties, if they have, uh, very close seats and then the indigenous seats would matter. Other than that, it's still up to the, each political party, uh, because they always don't put indigenous legislation as a priority. So we have to earn it. So, uh, because we need to earn this, so there's a lot of struggle and compromise during all these processes. But right now, uh, on the positive side is that we have the presidential office to back us up because we have this, uh, indigenous traditional justice committee inside the presidential office so that is one thing we have, we can make use of it. But if, but if that, if that thing's gone and then we are back to, uh, our normal, uh, position and we need to find, uh, a gap between these two major parties and to find a way to sneak in and when then we might pass our legislation. Other than that, uh, it is very difficult.

Dr. Charlton: So in in the Philippines, just to pick up on what Claire and Awi said, to effectuate these rights there- and we've talked about it, and we've talked about land, we've talked about free and informed prior formal consent, and then political power- how is the situation in the Philippines? And maybe more generally from your guys' point of view, you Teddy and Kathleen, how do you, how is it addressed there and what, uh, what do you think needs to be done? Awi talked about affirmative action and looking at it from that point of view as well, maybe you guys could comment on that? Whoever wants to go first? Kathleen you want to go?

Atty. Tantuico: Uh, I, if, if Congressman Baguilat does not want to go first, I can start. So, um, right now there's a lot of, um, issues regarding mining and ancestral lands. Because I think that there are a lot of laws that are in conflict with each other. So in terms of land, I'll give another concrete example. So under the Indigenous People's Rights Act, um, the indigenous peoples are given the opportunity to have their ancestral land titled, right. But then there's also, um, the environmental laws that, let's say, like, for example if an ancestral domain or ancestral lands have mining, have mining areas that can be mined. Um, when, if an indigenous person wants to have their land titled and there is a conflict with the delineation of the border, um, there can be no title issued to the indigenous person if all government agencies do not agree, right. So of course these

government agencies will not agree after such a long period of time and I think this is one of the roots why there are a lot of grievances from indigenous peoples. So like I said, I think the government is set up and the laws are set up in such a way that really have a lot of gray areas that can that can bring about conflict. So resolutions are always delayed and the grievances of the indigenous peoples continue and land right is just one perspective there. I think Congressman Baguilat knows more about the other perspectives but for, in general, as a lawyer, these are one of the things that I see, um, that can that still have, still has a lot of room for improvement. It's the system itself, it's the laws itself, themselves that, um, create a lot of conflict for our indigenous peoples.

Dr. Charlton: Congressman?

Teddy: Yeah, um, for me, I agree with Kathleen that the law really needs to be amended. The problem is, uh, IPRA itself was actually questioned before the Supreme Court, its constitutionality. And I think a decision was, it was, the vote was a tie and so there's a hesitation from among us legislators to move for amendments of the law itself because of the difficulty of having passed that law. Uh, for instance, Kathleen was mentioning about the right of government agencies to object to the awarding of an ancestral domain. This is because of the provision in IPRA that says that prior rights are going to be recognized so for instance, even if our ancestor domain is backed by, supported by our native titles or our indigenous governance, uh, agencies like the Ministry of the Environment who may have, uh, issued a previous binding claim inside an ancestral land prior to the passage of the Indigenous Peoples' Rights Act have the mandate to object or to issue their objections 'no, to the issuance of the ancestral, the domain title. And so for me, I think while past, uh, affirmative action is important, uh, in terms of providing social services to the indigenous peoples like for instance education, i think what's more crucial for us indigenous peoples is really to learn about these rights, whether these rights are those enshrined in our national laws or international conventions or even our rights that are intrinsic in us, *no*. Because this, the benefits from these rights will not be handed to us on a silver platter, definitely. The Indigenous Peoples' Rights Act was born out of decades or centuries for struggle of the indigenous peoples against the colonial powers, against the national government before it was enacted. And until now, I don't think that, despite the existence of this law, government or big business will not just as easily recognize, uh, the rights and responsibilities of indigenous peoples. It is our mandate as IPs to really educate ourselves about these rights and be able to fight for them and this is the reason why I say, in some way, affirmative action for more educational opportunities to IPs is important and I'm not saying that indigenous peoples are not learned. We are but I guess in the society that we live right now, we need to learn about English, Science, Mathematics in order for us to be able to fight more effectively for our rights under this, uh, current system. Uh, just a final word on this, I remember we went to a very remote area to promote the Department of Education's Indigenous People's Education Program because I was pushing for an IP Education Law and the educators started with saying that "We are here, we are here in your, um, ancestral land because we want to educate you." And when I started my talk by saying, well we are already educated but I think it's important for us to learn about non-indigenous education so that we will be able to fight for our rights as indigenous peoples because if you do not know, we already have these rights that are already intrinsic in us and are actually guaranteed under our current laws, under the Philippine Constitution and under the Indigenous Peoples' Rights Act. And I think that's what my fellow indigenous peoples appreciated, instead of, you know, coming from the high pedestal and saying that "We are here to grant your rights."

Dr. Charlton: Um, I'm just wondering a follow up on that point and the point Claire made in and I'd like to direct it to you in the Philippines and in Taiwan, Claire talked about a narrative, how the narrative in New Zealand of two separate people, uh, groups coming together as exemplified or

demonstrated by the treaty, uh, assists in this process. Does, is the national narrative and in the Philippines and in Taiwan, is there room for that? Is it changing with the development over time to make it more, uh, capable of working with these claims? With these rights? And I guess maybe, uh, well whoever wants to take that question can take that question.

Atty. Tantuico: it's a very difficult question.

Dr. Charlton: Well is it changing there? I mean you have these, you have these national laws, you have these, this advocacy that you're doing, that Congressman's doing. Is the national narrative changing, is it becoming more accepting? Awi pointed out that it's very difficult right now, uh, for him. Are you seeing change?

Atty. Tantuico: No, I think it's still difficult. I think, um, like especially during this pandemic there were a lot of issues with respect to indigenous people's rights and their rights to get relief from government and, um, during the pandemic there were still a lot of, um, problems about mining, there's still a lot of indigenous peoples losing their rights, fighting for the right, losing their lives while they're fighting for their rights. So like what Awi said, it's still very difficult because the, it's really difficult to change a system in the government that has been like this since time immemorial. That and, you know, I think, um, the efforts of legislators like Rep. Baguilat is, are very, uh, are very noble but like I said it really depends on the political will of the whole legislation, legislature in the Philippines and personally and I'm just not seeing, um, a lot of development that can really instill change that can be seen at the moment at the national level.

Dr. Charlton: Congressman?

Teddy: Yeah, just to reinforce what Kathleen said, the mere fact that every month, 'no, tribal leaders are killed, uh, mostly because of their opposition to mining and extractive industries. I remember we, there was a period in congress that we conducted weekly congressional investigations on the deaths of indigenous peoples because of their opposition to mining. So yes, it's, I guess, maybe this is also the result of indigenous peoples now asserting their rights, starting to assert their rights because, uh, previously not so much for us Cordillerans because in the Cordilleras, we're supposed to be the warrior, uh, IPs so we fight against invaders but for so long, there were so many indigenous communities who would, who are really non-violent or pacifist by nature, that's part of their culture. And so whenever there's, um, an intrusion into the ancestral lands, they would normally just leave and this is the reason why many of the indigenous communities are now in the mountains or in the hinterlands, *no*. They've vacated the flatlands or the coastal areas because of, uh, of, uh, settlers. But now because of mining and mining is now intruding into this, uh, into their ecosystems- whether it's a mountainous area or forest- now they're starting to learn more about their rights and they're now empowered and this is, I guess the reason why there are more, unfortunately, there are more killings or more, um, threats and harassment against indigenous peoples. So I see in both ways. One is the problem is still there this is still a lot of pushback. Government is still not able to protect, uh, indigenous peoples because of conflicting policies. I mean they allow mining at the same time they say they respect indigenous people's right self-determination. But secondly, I also see this, uh, as more indigenous peoples, uh, learning about their rights and having more solidarity and strengthening their networks and their movements not only among indigenous peoples but also among politicians and in civil society organizations. So it's still a struggle, uh, but hopefully, um, you know, i mean that's like in in all struggles, uh, we do hope that we accomplish something positive at the end of the day.

Dr. Charlton: Awi, do you wanna?

Dr. Mona: Excuse me?

Dr. Charlton: Do you wanna comment on that and maybe, Claire asked...I guess I wanted to ask you, anticipate, is it changing in New Zealand? What's happening in New Zealand over, I've lived there for two decades and I've, I think I've seen change but I'm interested in hearing your views on that so maybe...

Dr. Mona: In Taiwan?

Dr. Charlton: In Taiwan, yeah, if you could mention Taiwan and then we'll ask Claire about that and then we'll go to questions.

Dr. Mona: Uh, I think, uh, in Taiwan, I always say we are under, I would humbly say, we are on the right track right now. Uh, although the indigenous traditional justice, uh, issues is not becoming a majority. Uh, we haven't got a majority support yet but it is becoming an important issue for the general society to be aware of. So like, uh, the mining issues in Taiwan, of course it has a great impact on indigenous communities in Taiwan but we used to stand on our own only but we have a number of different allies from different NGOs in Taiwan and we can, uh, stand together to make claims. And other than that, I think we are using a number of different channels like language, like education to put forward our indigenous claims and to have more dialogue with the general public, with the, with the government. But, uh, as I think the, because the administration system in Taiwan, uh, although we have the support from the central government but there is still a huge gap domestically in the, I mean the local government part. So at least I think we are in the right track but we still have a lot of things to conquer.

Dr. Charlton: Claire?

Dr. Charters: Um i just wanted to make one comment just going back to it before I talk about change in Aotearoa New Zealand, um. But just about, um, and it's interesting hearing this but just about the, as movements trying to balance the pragmatic change, trying to achieve change within, inside the system, trying to take some gains that you can get using, say, affirmative action or whatever it is versus the kind of outside, you-need-fundamental-systemic-change to a sort of state constitutional structure and that's going on the same side or you've got legal systems that are and systems that are working in communities that just operate outside of the state whether the state authorized them or accepts them or not, you've got community law dictating what happens in communities. So most indigenous movements require to be successful since from historically have to have all of those things kind of happening at once like using multiple tools- protests, working within the state, working as parliamentarians, bringing advocacy to the international domain, you know, yeah being, being, having indigenous persons who are very well-versed with and educated in the, in the state legal system so that you can use those tools too so, yeah, it's just and I see that coming through and, um, and some of the discussion that we've had today and I've found that interesting. It's reminded me of the sort of multi-pronged approach that one has to have and everyone fills a role as long as you're hopefully going in one direction. So your question to me was just this last one was about change in Aotearoa New Zealand. Uhm, as Guy, I mean I'd be really interested to see what you think because I think often, um, I mean while you're very embedded in Aotearoa and it's community, you're also watching a little bit from afar and often you know, well you know, like from outsiders perspective to some extent inside and outside and often that can be really an insightful place to see what's going on. But I do think we are in a moment of potentially quite big change, um, I think post the 80s and 90s things really slowed down in the 2000s epitomized by the foreshore and seabed debacle. Um, and just, uh, you know really sort of became the everyday of doing treaty settlements which aren't, I think, terribly fulfilling in a, in some ways they're just about trying to get a pragmatic outcome and some financial resources to

tribes, that's my own view. But so what I think is happening now and why I think there is room to be quite positive and this is from particularly a legal perspective I guess some or some of it is but, um, we've got increasing recognition of tikanga Maori as part of, as a legal system here. That's coming from state courts but it's also coming from outside state courts and outside of the states so we've had exercise of authority by indigenous communities, Maori communities and tribes during Covid. They stay out of our communities, for example. We're regulated by tikanga Maori. Who cares whether the state lets us do this, you're not allowed in, whoever you are during Covid, um, so those sort of exercise, that exercise of authority. I think within this, within state, um, within the Labour Party, there are some really positive developments so around some specific issues like criminal justice and, um, realizing that the incarceration rate of Maori being as terrible as it is and for those who don't know, um, about 60 percent of our, um, women in prison are Maori and over 50 percent of, um, our male prison population is Maori as well when we make up around 15% so realization that we have to have sort of transformative change there. We also incarcerate a lot of our people- we're second only I think in the western OECD to the states and locking people up maybe also to Australia. o there's, there's recognition that that has to change and I think the Labour Party which is in power now has, is committed to that. Fresh water is a big issue, it's coming up, it's in the 100-day plan then you've just got really interesting things happening so with our new cabinet makeup which is our Executive Government and the Executive in New Zealand has all power. As far as I can see, they can change law, they're, they're in control of the legislature, they're in control of every, they can override state, uh sorry, case law. So you know, Executive is really powerful. Um, I don't know what the exact percentage is but it's well over 15 percent are made out of, made up of Maori. Some really interesting appointments- so a strong indigenous advocate and has been in the international sphere is Kiritapu Allan. She's going to be our Minister of Conservation, pretty interesting. Nanaia Mahuta has just been appointed for the first time- we've got a Maori and Maori indigenous woman as a Minister for Foreign Affairs and Trade. Now that's going to be really interesting in terms of the declaration, I think. Um, you've got a Green Party and a Maori Party who are quite wedded to constitutional transformation and pluralistic sort of power-sharing based on a model presented under Matike Mai which will probably only speak to you, Guy, but presented by the (inaudible). So you've got this movement around Constitutional transformation which is what I'm working on. Mining, you've got, this is not necessarily mighty specific but you've got a government that's trying to, I think, move on, um, climate change and so there's moratoriums on mining and our outside waters, um, which is big for a country that's surrounded by water. Um, you've got, um...actually I'm gonna stop there. The problem, I think, with, uh, uh, the current government and movement is that, um, there's still a propensity, I think, to see Maori issues as a social justice issue as, um, this is socio-economic. We need to have more houses for Maori. We need to have better education for Maori. We need to improve health outcomes for Maori. All of those are important, don't get me wrong, I'm not contesting that those are important but that's not the heart of the Maori claim around (inaudible) and realization of the Treaty of Waitangi. That's sheer power sharing and that's something that I think a more left-leaning government struggles with. Ironically, I am never, I'm not a right supporter at all but I have some, um, I can see why our center-right government has had some success, I guess, or it's made some movement on, um, recognition of Maori autonomy because it's stayed out. And so it allows spaces and rooms for Maori autonomy and Maori governance to move, um, yeah. So that's, but I do think we're into an exciting movement for those reasons that I named before. But I'm interested in your views too, Guy, on Aotearoa if it's interesting or whether we take that offline maybe.

Dr. Charlton: Um, maybe what we should do is we have a, I, I'm, uh, maybe we should take that offline, we've got a few questions. But yeah, I've got, one of the interesting things is that you point out and I saw this from working in the States is you get sort of trapped in that social justice language sometimes where you don't disagree with it but you're making those claims and to

certain extent, it's not really those claims those are sort of not secondary, it's not the right word, but you're making a larger claim. And you in, in especially here in Australia, you get that it's just social justice, it's just affirmative action and that's it. And that doesn't really address the underlying issue.

Dr. Charters: It's much easier for the state because it affirms the state. It's about the state coming to the rescue, you know, of indigenous peoples rather than recognizing that maybe this, the state's legitimacy is fundamentally a bit questionable.

Dr. Charlton: Yeah, that's right, that's right. So well, um, maybe what we could do is take a few questions from, uh, the audience. Um, the first question is, uh, we talked about some traditional decision making in traditional laws- and this is to the panel generally- is, um, are there cases in the respective jurisdictions or that you've run across where traditional laws and practices are sometimes superseded by national laws and, uh, what's the experience of the communities, if any, uh, in these particular circumstances? If people can share some of their experiences in that regard...Um, maybe start with the congressman. Have you?

Teddy: Okay, uh, maybe I'll just focus on the free, prior informed consent because this, uh, this is very, this actually operationalizes the principle of right to self-determination as far as the government is concerned. So yes, um, for many indigenous peoples, uh, decision making is not usually timebound, could take years, it could take, uh, a day, it could take...well depending on how they see the heavens or whatever cultural practice that they have. Uh, but under the law, um, while it recognizes that they have the right...to self-determination and through the FPIC process, they may be able to give their FPIC. However, uh, because of the, to be able to process the permits for whether it's mining or in any other extractive industry or development project within an ancestral domain, the government through the Commission on Indigenous Peoples requires indigenous peoples to make the decision within two months or 60 days. And, and again as I mentioned earlier, for indigenous peoples, many indigenous peoples, decision especially on very crucial community issues requires a consensus. So they don't usually do a votation or divide the house as what we are accustomed to in Congress, uh. But initially, for the, for the agencies whenever there is, whenever the two-month prescription is, uh, uh, is already upon the community then they, if there's no consensus, then they force the community to vote whether to accept the project or not. And this has led actually to more divisions within the community. That's why in the Congressional Report which we did on the effects of mining in the Philippines one of the most important findings was mining has led to divisions within indigenous peoples communities because of this, uh, FPIC process. So to me, that's, that's, uh, one very important, uh, example of how traditional governance- while it is recognized in the law- but in terms of the implementation of the law, it actually disrespects indigenous knowledge.

Dr. Charlton: Awi, do you have an example of any anything from Taiwan?

Dr. Mona: Yes, uh, I think, uh, apart from what Congressman just mentioned about uh, FPIC, I would say in Taiwan, the conflict between the indigenous traditional laws and the national laws. I would say a number of important issues right now is before our Supreme Court, even the Constitutional Court, uh. And that's the example on the indigenous cultural practices on the management of natural resources. What I mean is the hunting, gathering and fishing rights. So it has been a huge, uh, controversy, um, the natural resources management, management if we want to pursue according to indigenous traditional practices. Even, even that is, uh, even that is okay with indigenous traditional laws but sometimes the, uh, the government side, they still will pay little attention to the indigenous laws. But so, right now, there are a number of different cases waiting for the Constitutional Court to give the final decision. And that's for the criminal, criminal

cases and also there's some civil cases- it's about the, uh, alienations on the indigenous land. So that's for the civil, civil cases. And there is al...there is also one, uh, important case before the, uh, the Grand Justice, uh. So it's, it's all before the, our Justice Department to give a final say. So that I think if the, if the, uh, Constitutional Court, uh, can have, uh, we hope the Constitutional Court will give a positive, uh, view on indigenous cultural practices. And another thing is, I, it is very common that since 2009, Taiwan has the, uh incorporated two international human rights convention at the domestic law. But I mean it is very common for the people to see both the, uh, both the, uh, Executive branch, also the Justice branch, they, they're always trying to incorporate these two international human rights conventions into, uh, what they are doing. But they sometimes misunderstand what the core idea, uh, from the international convention, uh, what the convention has provided to indigenous rights, so they kind of misunderstood that so that makes the, makes the, makes what they have been done is the, uh, without a concrete standing on that. So I think that that's another issue we can look at between the national laws and indigenous traditional laws, yeah.

Dr. Charlton: Thank you! Claire, is there any examples from New Zealand?

Dr. Charters: From a state law perspective?

Dr. Charlton: Uhm...

Dr. Charters: The basic position is that, uh, it's, we're a mono legal system, there's only one legal system and that is the important state law. Very New Zealand really, I think, wedded to this in ways that I think even other comparative jurisdictions aren't because we're such a mono-legal system, period, and we don't share power, not even between states or provinces or whatever this power is just really unitary in one spot. So that, that is a fundamental starting point, um, and you see that particularly in criminal law cases so if someone tries to argue that that they should be, um, tried or whatever being, be regulated by tikanga and the criminal setting that's generally just thrown out by the State court. Um, so that's the formal position. Obviously, the real life position is a little bit more colorful than that, although not a whole lot so there is, there is room, I think for tikanga to influence conservation law for the Resource Management Act. But generally, I think the state law and state philosophical foundations determine what happens so while there is a reference to kaitiakitanga in our Resource Management Act which is our big piece of legislation regulating resources, um, the philosophy is about sustainable development which is conflicting with some tikanga or Maori values that you don't, that where we see nature as mother earth or Papatūānuku which is something different from using the resource in a sustainable way. Um, so we don't, yeah, so, um, in the main state law, once there has been some movement, um, particularly driven by the Supreme Court I noticed was interesting to hear about case law and other jurisdictions, um, and that is quite new and I think that is, that shows, um, that there's some more spaces developing in the state law, legal system, um, but they're quite minor, I think at this point. That's not to say, however, that Maori don't regulate themselves under tikanga Maori in our own domain sort of under the radar of the state so that those laws continue to regulate what happens on marai, on our meeting houses and in some more remote areas where there's just not much state presence. I mean there's not many of those areas in fact and but it does happen. Yeah.

Dr. Charlton: Thank you. Um, Kathleen you might want to comment on that question then. There's also a question directed towards you, uh, maybe I'll just say it right now. Could you discuss, uh, comment on the current issue with the lumad?

Atty: Tantuico: Yes.

Dr. Charlton: Yes, maybe your views, if you have any examples from the previous question and then maybe talk about the lumad situation.

Atty. Tantuico: Okay so I just wanted to add for the previous question about, um, traditional laws being superseded by national laws. I think one of these is the traditional view of indigenous peoples to be in control and in possession of their, the colon...cultural artifacts of their ancestors. So I say this because, um, I'm referring to colonial, cultural materials that were removed from the Philippines or any succession state or former colony during the period of colonization. There are a lot of these that are on display in museums abroad and, um, interviewing some indigenous peoples for my juris doctor thesis on repatriation, um, I think there is a view that they want access to these if not if they cannot be in possession of these artifacts or colonial materials they want access to it and that is one of the things that the UN DRIP guarantees. But if I may give a concrete example of a law, our Cultural Heritage Law only takes into consideration registered cultural properties which were registered from 2010 up to the present. So current, um, legislation in the Philippines does not take into account these colonial cultural artifacts which, um, indigenous peoples here in the Philippines clamor to have access to. So there, that's, that's a concrete example of how the traditional views of indigenous peoples are superseded by the national law. And moving on to the question, I saw the article, it was, uh, the question led me to an article, a specific article about mining. So what happened in the article was, um, there was, uh, there were documents that showed FPIC about, um, allowing a certain mining group to mine in the, within their ancestral domain. So if I may comment on this, this is a concrete example of how I think it depends on political will and the system if they want to favor indigenous rights. So, uh, reading the article, it says there, there were a lot of views that, the obtained the formal FPIC, the signed document that declared that the IPs in the area, um, had given their FPIC for the mining operations to continue may have been, um, fake, um, may have been obtained in, may have been obtained circumventing the process. Um, some claim that such document was "fake", quote unquote. So I think that that article is really a concrete example of what's happening here. Um, there are many ways to circumvent the law, maybe in any jurisdiction and, um, it must be recognized that we do have these laws, we do have FPIC but then if, um, they are meaningless if they are not enforced in the right manner and they are meaningless if, um, this mechanism is abused and circumvented which I think, um, is what is happening and why a lot of our indigenous peoples are losing their ancestral domain to mining activities. And on the government side, on the flip side, I also think, um, it's, it's a very difficult decision on their part because, like for example, if they know that the, uh, development activities such as mining will benefit the country as compared to, um, indigenous peoples, then, um, it really depends on their decision-making on how to balance it. But judging from what is, what is happening from these news articles, we see that the political will leans to the favor of these development projects very much, um, heavily tilted to one side. And that means that there's really no balance that's happening and it's to the expense of our IPs.

Dr. Charlton: Interesting. Um, I thought what we would do, I mean when I listened, when I listen to you guys and I could talk, I could actually- even though they say Zoom is, takes too much intellectual (inaudible) effort and it tires us out because we don't see the non-verbal cues that we all work with. I could sit here and talk more for a couple more hours but I thought we're gonna have to wrap it up and I thought maybe we could have a final comment from all of you. One of the things that I noticed when we came out of this discussion is Claire, you mentioned that in this sort of activism you have, you have to be pragmatic yet there's these larger structural issues and you have to be good at all those things, um, at the same time. And the other notion I'm struck is that, um, from the perspective of our conversation, the law has both been, both a mechanism where we dispossess and oppress people but yet at the same time, we look to that same mechanism as a way of effectuating certain things. And I'm, I guess I would, uh, like to end on sort of that point

that your view on the use of the law and dealing not only with, uh, heritage questions but more generally in terms of, uh, these indigenous rights and, uh, then, uh, we'll turn it over to Steve and Maddie. So Congressman, would you like to start, start off?

Teddy: Yeah, I think, um, it's important for when I made the point earlier that indigenous peoples really have to strive to educate themselves with non-indigenous law because this is the reality that we live in. We're a minority actually in many of the places that we exist, uh, and it's only by learning about our intrinsic rights as well as how we can empower ourselves and take advantage of the law, the national laws, the state laws to be able to, um, to strengthen these rights and responsibilities. Only by doing so can we be able to protect our ancestral lands as well as our traditional governance. And having said that, I think one of the lessons I've learned over the past 30 years as a politician and as an indigenous people's rights advocate is the need for indigenous peoples to strengthen themselves as a political force. Um, it's good in New Zealand for instance that you have, uh, automatic representation in the parliament that in a way, uh, you are a political force because of the number of the population. In the Philippines, while we say that ten percent are indigenous peoples, uh, the hardest sector to organize actually are IPs. Um, and so while parliament generally is open to hearing amendments to existing laws or the introduction of more laws that protect indigenous people's rights, it's important for us to be to learn the capacity on how to deal with politicians, how to work with parliamentarians. So that also is my work as a director of the ASEAN Parliamentarians for Human Rights so whether it's indigenous peoples rights, it's important for us to engage policy makers and learn the capacity, learn the know-how on how to how to, uh, organize ourselves as a strong political force in order to be able to effect changes within the political system of our countries.

Dr. Charlton: Thank you congressman. Kathleen, do you have some final comments?

Atty. Tantuico: Um, just to add to what Congressman Baguilat said, I also think that legislators should focus on how to make current laws work. Although I feel that, um, there are amendments and new laws will also benefit, they might take a lot of time and they really feel that the revisiting of current laws and seeing how they can be implemented better and how they can be implemented taking into consideration in the indigenous peoples the all the more that they are now, that they are doing now, then I think, um, in time maybe, hopefully we will see the change that we were talking about earlier. Thank you Guy.

Dr. Charlton: Thank you. Um, Awi, you want to? We'll give Claire the last word.

Dr. Mona: Okay, uh, thanks, thanks for today. And I think in Taiwan, uh, the big question or the big issue right now is that we have a number of different legislation in place and the priorities, thing is we need to have those laws implemented effectively. So there's an implementation gap I think that's common for all the indigenous people across the globe and another thing is the, it is sad to say that, uh, we usually have to try the law personally, to challenge the law personally, and then in order to make the law to be revised or to be to have the Justice branch to make the law. So I think that that's another thing, uh, in Taiwan. It is not that positive but we must take this kind of position right now. So one is implementation gap, another thing is we need to challenge the law personally. But the whole picture is that we are getting more acceptance, uh, and recognition from the general populations and we just need to, uh, have more uh dialogues or conversations, communications with the general public to make people understand and to accept and to recognize indigenous peoples are not just the racially disadvantaged groups of peoples and that can advance our rights claims to be, uh, have more concrete standing. So I learned a lot from everybody today and thank you very much.

Dr. Charlton: Claire?

Dr. Charters: Thank you. I think that you made the point well. I think it's important to work inside the law, try and change it as much as you can. Um, but you have to realize that in most jurisdictions, the law is the state's tool and so if you really want to challenge the state and what it's doing, you also have to work outside of it and challenge that the law is the state's tool. So you've got to work inside and outside and some people are better at some things and some people better at the others but the multi-pronged approach is, I think, the only way that you're going to get closer to, um, indigenous peoples' realization for indigenous peoples' justice.

Dr. Charlton: Thank you, um.

Dr. Charters: Okay.

Dr. Charlton: Uh ,it's been a pleasure to, uh, to listen and be engaged in this conversation and I'm, uh, I'll turn it over to Steve now, and thank you, and Maddie.

Dr. Acabado: Thank you, Guy, and the whole panel. Um, such an engaging on discussion. So on behalf of the webinar team, um, I would like to express our thanks to the panelists. Really, statutes that provide protection and opportunities to indigenous communities are needed although concepts of indigeneity are diverse and, of course, dynamic. One thing is common among the experiences of indigenous communities and that's the social and environmental injustices. There's still a ways to go for us but if this panel discussion is any indication, hopefully we'll get there and sooner than later. Um, we also recognize that institutionalizing indigenous people's rights is important but we also have to keep reminding ourselves that the concept of indigenous rights or law, again is dynamic and thus as most of you have argued, uh, statutes- I don't know if they can be, they can have flexibility for a space or flexibility to include indigenous perspectives. So I guess that's our panel for today. We have two more next week- we have Panel 9 that focuses on, um, textiles, traditional textile, um, in Southeast Asia and then the week after is wrapping up. So Maddie, do you have any uh announcements?

Maddie: Um, just announcements about the certificate for the e-certificate for your participation in Panel 8. Uh, we don't have a panel link right now, unfortunately due to unforeseen circumstances but I am dropping the email of, um, of, uh, our group email there and you can contact us and we'll email you the correct link either sometime tonight or within the next 24 hours. Um, so that way you can still get your participation. So I'll just drop that email in the chat box and you can send us a message and we'll forward you the link. Other than that, um, we hope that you'll join us next week for Panel 9. We only have two more panels left of this whole webinar series. For Panel 9, um, the topic will be Preserving Textiles, Indigenous Knowledge and Methods. We are actually collaborating with SPAFA on this event so you can register for that on zoom or you can follow us on Facebook. If you joined us late for this panel, you can catch up on our YouTube and re-watch it there or you can read our transcripts. f you didn't know every week, we upload the video onto our website along with a complete transcript for you to view and download so that if you want to see anything again or read anything, it's available to you, for your studies. But other than that, thank you so much. Um, we apologize for the inconvenience of not having the survey link but I'm going to be leaving the email there for you today.

Dr. Charlton: Thank you.

Dr. Charters: Thank you .

Dr. Charlton: We'll, I'll bid everyone goodbye. Thank you, again!

Dr. Mona: Thank you.

Teddy: Thank you.

Atty. Tantuico: Thank you so much!

END